

MELINDA HAAG (CABN 132612)  
United States Attorney

MIRANDA KANE (CABN 150630)  
Chief, Criminal Division

W.S. WILSON LEUNG (CABN 190939)  
WILLIAM FRENTZEN (LABN 24421)  
Assistant United States Attorneys

THERYN G. GIBBONS (NYBN 4612867)  
Trial Attorney, United States Department of Justice, Gang Unit

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
Telephone: (415) 436-6758/7301  
Facsimile: (415) 436-6753  
E-Mail: [wilson.leung@usdoj.gov](mailto:wilson.leung@usdoj.gov)

Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
 )  
 )  
IVAN CERNA, et al., )  
 )  
Defendants. )  
 )

**No. CR 08-730 WHA**

**GOVERNMENT'S STATEMENT  
REGARDING MENTAL  
EVALUATIONS**

Date: TBD  
Court: Hon. William Alsup  
Time: TBD

The government met with counsel for defendant Cruz-Ramirez as ordered by the Court. The following is the government's statement regarding the agreements and disagreements from that meeting. If government counsel misstates the position taken by defense counsel, he is sure that defense counsel will point that out to the Court, but this was government counsel's best recitation

1  
2  
3 of the discussion that took place. Government counsel would have submitted this for review by  
4 defense counsel, but he is already late in filing this document due to an ongoing unrelated trial.

5 1. Use if no mental expert is presented in the defendants' case. The parties agree on this point.  
6 Defendant Cruz-Ramirez objected to the use of statements from the mental evaluations unless the  
7 defendant introduces his mental condition through an expert first. That is provided for by Rule  
8 12.2, however, and the government always anticipated that any such statements would not be  
9 usable until after defendant introduces his own mental condition expert. The parties therefore  
10 agree, and any use of the defendants' statements from the government evaluations will be  
11 conditioned on the defendants introducing an expert on mental condition during the defense case.

12 2. Scope of the examination. The parties disagree on this point. Defendant Cruz-Ramirez  
13 concedes that the government evaluation can gauge defendant's mental condition related to the  
14 RICO conspiracy, his gang membership, and his connections with other members, as well as  
15 some overt acts of the conspiracy. Defendant claims, however, that he will not raise mental  
16 condition as a defense to the two specific homicides that are charged against him, and would  
17 therefore object to any questioning of the defendant regarding the defendant's state of mind in the  
18 two homicides. The government does not concede that the two homicides should be off limits as  
19 they occurred during the scope of the conspiracy and because they would shed great light on the  
20 defendant's overall mental condition during that conspiracy. It is also far too convenient to  
21 believe that the defendant had a mental condition that rendered him incapable of the intent to join  
22 a conspiracy, but not probe his willingness and intent to kill for that conspiracy in testing that  
23 mental condition. Therefore, Cruz-Ramirez objects to any questions specific to the two  
24 homicides, and the government seeks to have the evaluation include questions regarding the  
25 defendant's mental condition during the homicides. Defendant also seeks a statement from the  
26 examiner prior to the examination regarding the scope and the tests to be used during the  
27 examination. The government agrees that the general scope of the examination can be shared –  
28 after all, it will be what the Court orders is proper – but disagrees that the defendant should have

1  
2  
3 prior notice of any tests that may be conducted. Such notice could impair the effectiveness of the  
4 testing and aid any defendants in malingering.

5 3. Defense counsel's presence during the examination. The parties agree on this point. The  
6 parties agree that defense counsel may not be present in the room during the examination. The  
7 parties also agree that defense counsel can be present in a nearby location during the examination  
8 and that the defendants may request reasonable time to consult with counsel during the  
9 examination if they feel such consultation is necessary.

10 4. Review of the examination. The parties agree on this point. The parties agree that the  
11 examinations shall be recorded. The parties agree that the recorded examinations shall be made  
12 available to the parties as soon as possible after the examinations. The parties agree that any  
13 disputed objections to portions of the examinations shall be raised with the Court within a short  
14 period of time. The government recommends 7 days, but did not raise a specific period of time  
15 with defense counsel. The parties agree that no "taint team" is necessary for the review of the  
16 examinations on the part of the government. The parties agree that any portions of the  
17 examination that are determined by the Court to be improper will not be relied upon by the  
18 government examiner in the final report and opinion, and that the government shall not seek to  
19 introduce any such portions in rebuttal if the defendants proceed with introducing an expert on  
20 mental condition.

21  
22 DATED: January 27, 2011

MELINDA HAAG  
United States Attorney

23  
24 By: /s/  
25 W.S. WILSON LEUNG  
26 WILLIAM FRENTZEN  
27 Assistant United States Attorneys  
28 THERYN G. GIBBONS  
Trial Attorney, U.S. Department of Justice